

1 MR. SCHAUBLE: Counsel referred to the --

2 JUDGE CHACHKIN: Page 2.

3 MR. GARDNER: Page 2. I'm sorry. Okay.

4 BY MR. EMMONS:

5 Q 246, page 2.

6 A 246, page, 2, yes.

7 Q Last paragraph.

8 A Yes.

9 Q And that paragraphs begins with a reference to the  
10 statement in Exhibit 1 of the applications concerning the  
11 lease negotiations with the site owners, and you say starting  
12 on the third line of this paragraph, "I believe that my  
13 telephone calls with the representatives can fairly be  
14 described as preliminary lease negotiations since we generally  
15 discussed the terms under which the sites might be made  
16 available." Do you see that?

17 A Yes.

18 Q And would you turn to the -- let me, let me ask you  
19 a question about that. Why did you not state in this, in this  
20 declaration the particular terms that you did discuss with the  
21 site owners?

22 A This declaration was prepared by John Schauble after  
23 a series of questions by him and answers by me, and the  
24 answers that I gave him I think were what he used to create  
25 this declaration for my review and upon my review I felt that

1 what I had stated in here was accurate, and I didn't see that  
2 -- well, that's the way I felt when it was created, yes.

3 Q Did you tell Mr. Schauble what terms -- what lease  
4 terms you had discussed with the site owners?

5 A I think that John Schauble asked me a series of  
6 questions on this particular declaration and I answered his  
7 questions. I don't recall that I discussed any further lease  
8 negotiation discussions other than what are in here.

9 Q You used the term "preliminary" in describing the  
10 lease negotiations in this declaration. Do you see that?

11 A Yes.

12 Q In the fifth line from the bottom?

13 A Yes.

14 Q Now, you didn't use the word "preliminary" in  
15 Exhibit 1 of the applications to the FCC, did you?

16 A No.

17 Q So this declarations adds a qualification that was  
18 not included in Exhibit 1? Is that not correct?

19 A Yes.

20 Q Do you now admit that your conversations with the  
21 site owners in those telephone calls were not negotiations at  
22 all?

23 A I do not admit that.

24 Q Well, you're an experienced businessman, are you  
25 not, Mr. Gardner?

1 A Yes.

2 Q And you've conducted many negotiations over the  
3 years?

4 A Yes.

5 Q What does the word negotiate mean to you based on  
6 your business experience?

7 A A discussion between individuals who are trying to  
8 achieve, achieve a common goal.

9 Q Is it anything more than a discussion?

10 A Not until you sign the papers.

11 Q Doesn't the word negotiate mean something to you  
12 more than simply the word discussion?

13 MR. SCHAUBLE: Objection, Your Honor.

14 JUDGE CHACHKIN: Overruled.

15 MR. GARDNER: I don't believe so, no.

16 BY MR. EMMONS:

17 Q Well, in what sense would you say that the one  
18 minute telephone calls you had with these two persons  
19 constituted negotiations?

20 A I generally recall that there was some question in  
21 my mind prior to the conversations about the availability of  
22 the sites, and after the discussions that I had with them I  
23 felt that there was the continuing availability of the sites  
24 in the future.

25 Q Well, referring to your declaration again, let me

1 ask you in what sense do you believe that the one minute  
2 telephone conversations that you had consisted of discussion  
3 of the terms under which the sites might be made available, to  
4 use your words?

5 A I made contact with individuals who I perceived to  
6 represent the owners of the sites and at the end of the  
7 conversation I felt that the sites were continuing to be  
8 available.

9 Q Under what terms?

10 A Under the fact that they're still available.

11 Q Would you turn, Mr. Gardner, to -- back to TBF  
12 Exhibit 245, page 3?

13 A Yes.

14 Q This is Exhibit 1 again of the December 1991  
15 application.

16 A Yes.

17 Q And focusing your attention on the third paragraph,  
18 last sentence, "A representative of Raystay and an engineer  
19 have visited the antenna site and ascertained what site  
20 preparation work and modifications need to be done at the  
21 site."

22 A Yes.

23 Q Now, would you identify for us who was the  
24 representative of Raystay referred to in that sentence?

25 A Myself.

1 Q And who was the engineer referred to in that  
2 sentence?

3 A Tom Riley.

4 Q Say it again?

5 A Tom Riley.

6 Q And did you mean in that sentence to say that each  
7 one of those persons had visited both the Lebanon site and the  
8 Lancaster site?

9 A Yes.

10 Q Because this statement was filed with both the  
11 Lebanon and the Lancaster applications.

12 A Yes.

13 Q And did you mean to say that each one of those  
14 persons had "ascertained what site preparation and  
15 modifications need to be done at the site?"

16 A Yes.

17 Q Now, would you turn to TBF Exhibit 246, page 2 --

18 A Yes.

19 Q -- which is your declaration? And at the fourth  
20 line from the bottom of the page the sentence reads, "With  
21 respect to the statement a representative of Raystay and an  
22 engineer have visited the antenna site and ascertained what  
23 site preparation work and modifications need to be done at the  
24 site, that statement refers to the engineer's visit to the  
25 sites." Now, do you agree with me, Mr. Gardner, that that

1 statement I just quoted from your declaration says that the  
2 statement in Exhibit 1 refers only to the engineer's visit?

3 MR. SCHAUBLE: Could I have the question repeated  
4 again?

5 MR. EMMONS: The question --

6 JUDGE CHACHKIN: The witness doesn't need to -- the  
7 witness understands the question. You may answer.

8 MR. GARDNER: Yeah. I'm trying to read this. No.  
9 I don't think that's what I meant to say there. I -- that  
10 statement refers to the engineer's visits to the site. Oh,  
11 okay, yeah. That's what I meant to say there, yes.

12 BY MR. EMMONS:

13 Q So it's correct that you're telling -- in your  
14 declaration on June 3, 1993 you were telling the Commission  
15 that the statement in Exhibit 1 referred only to the  
16 engineer's visit to the site and not to your visit?

17 A Yes.

18 Q Now, continuing on at the top of page 3 of TBF  
19 Exhibit 246, continuing in the paragraph it follows, "As far  
20 as I was concerned one of the purposes for the visit was to  
21 determine what site preparation work and modifications would  
22 have to be made at the site. Although I did not accompany the  
23 engineer on his visits, I have seen both sites." Do you see  
24 that?

25 A Yes.

1           Q     Now, that -- you will agree with me that that  
2 statement simply says that you have seen the sites and does  
3 not say that you visited the sites?

4           A     I interpreted the word seen to mean that I was there  
5 and saw them.

6           Q     Well, you used, you used the word visit earlier in  
7 the paragraph in referring to the engineer's visit? Correct?

8           A     Yes.

9           Q     And in the last sentence you say, "Although I did  
10 not accompany the engineer on his visit, I have seen both  
11 sites," so you used the word visit for the engineer and the  
12 word seen for yourself? Is that correct?

13          A     Yes.

14          Q     Now, that whole paragraph which begins at the bottom  
15 of paragraph 2 of page 2 and the top -- it continues to the  
16 top of page 3 of 246, that doesn't say that you ascertained  
17 anything, does it?

18          A     No, it doesn't.

19          Q     Are you now saying that you ascertained what site  
20 preparation work and modifications needed to be done?

21          A     Yes, I did that.

22          Q     No. Are you now saying that? Is that, is that your  
23 position now, that you ascertained what site preparation work  
24 and modifications needed to be done?

25          A     I did do that, yes.

1 Q Well, then why didn't you say in your declaration of  
2 June 3, 1993 that you did that?

3 A In this declaration I believe that John Schauble  
4 and I worked on this together over the phone and John asked me  
5 a number of questions about previous -- about Exhibit 1 and  
6 other documents and I answered his questions and he created  
7 the exhibit and sent it to me for my review, and I felt that  
8 upon my review of it that it was accurate.

9 Q Well, why did you not say in your declaration -- if,  
10 in fact, you ascertained site preparation work and  
11 modifications, why didn't you say in your declarations when  
12 you had done that?

13 A John Schauble asked a series of questions about work  
14 that had been done and other items about the LPTVs that I had  
15 helped on, and he created this declaration which I reviewed  
16 for accuracy and I felt that the statements that were in it  
17 were accurate.

18 Q Why did you not say in the declaration what you had  
19 found by way of site preparation work or modifications that  
20 were needed?

21 A I guess the question wasn't asked of me by John  
22 Schauble.

23 Q How many times have you seen each site, that is the  
24 Lancaster site and the Lebanon site?

25 A I don't recall the exact number.



1 Q Well, do you recall, do you recall at least one, at  
2 least one time --

3 A I recall at least two.

4 Q You recall at least two?

5 A To each site and -- at least two to each site, yes.

6 Q But you don't recall more than two?

7 A I recall more than two, but not to each site.

8 Q Do you recall more than two to one of the sites?

9 A Yes.

10 Q Which one?

11 A Lancaster.

12 Q How many sites -- how many times have you seen the  
13 Lancaster site?

14 A More than two.

15 Q How many --

16 A -- but I don't recall the exact number.

17 JUDGE CHACHKIN: By seen it, do you actually mean  
18 stepping on the, the land or riding by in a car or what do you  
19 mean by seeing it?

20 MR. GARDNER: Okay. I've been on the land twice at  
21 Lebanon, twice at Lancaster and possibly at least one more  
22 time at Lancaster, stand -- stepping on the land, and the  
23 other times at Lancaster I've driven up to the site which is  
24 -- it's a wide open area, and have taken a look at it.

25 JUDGE CHACHKIN: From the car?

1 MR. GARDNER: From the car.

2 BY MR. EMMONS:

3 Q Would you turn to your deposition page 127, please?

4 A Yes.

5 Q And starting at, at line 3 I'm going to read the  
6 questions and answers and then I will have a question.

7 "Question: Now, you said that you -- that you've made at  
8 least two visits to each of the Lebanon and Lancaster sites.  
9 Do you recall more than two visits to either one of them?

10 Answer: No, I don't recall." My question to you, Mr.  
11 Gardner, is how is it that you are today able to recall more  
12 than two visits to the Lancaster site when at your deposition  
13 you did not recall more than two?

14 A In, in preparation for these proceedings I  
15 researched and refreshed my memory on a number of things that  
16 I've done and one of those was trying to recall the number and  
17 types of visits to each of the sites from memory.

18 Q Do you have any document or reference of any kind,  
19 any source, apart from your recollection?

20 A No. It's all my -- from my recollection.

21 Q Now, with respect to -- again I'm referring back to  
22 TBF Exhibit 246 which is your declaration of June 3, 1993.

23 A Yes.

24 Q And the statement at the bottom of page 2 and the  
25 top of page 3 in which you have said that the statement in

1 Exhibit 1 refers to the engineer's visit to the site, the  
2 engineer there, you have testified, is Mr. Tom Riley?  
3 Correct?

4 A Yes.

5 Q And he was an engineer who had been retained by  
6 Trinity? Correct?

7 A Yes.

8 Q Now, Exhibit 1 is to the -- the application to the  
9 Commission in December 1991 didn't say that the engineer was  
10 an engineer retained by a prospective buyer, did it?

11 A Exhibit 1?

12 Q That would be page -- excuse me, TBF Exhibit 245.

13 A Okay.

14 Q Page 3.

15 A 3.

16 Q And the third paragraph on that page, last sentence,  
17 "A representative of Raystay and an engineer have visited the  
18 antenna site and ascertained what site preparation work and  
19 modifications need to be done at the site."

20 A Yes.

21 Q So you agree with, with me that Exhibit 1 does not  
22 disclose that the engineer referred to there was the engineer  
23 of a prospective buyer?

24 A Yes, I agree.

25 Q Now, in your conversation with Mr. Schauble that

1 | you've testified to earlier in which you discussed with him  
2 | information that led to the preparation of Exhibit 1, do you  
3 | recall that conversation December of 1991?

4 |       A     I recall having that conversation, yes.

5 |       Q     Right. In that conversation did you tell Mr.  
6 | Schauble that the engineer referred to here was not Raystay's  
7 | engineer but was the engineer retained by a prospective buyer?

8 |       A     I don't recall the specifics of the conversation.  
9 | John Schauble asked me a series of questions and I answered  
10 | the questions.

11 |       Q     You don't recall whether you told him that the  
12 | engineer was an engineer hired by a prospective buyer?

13 |       A     I don't recall whether I did or not.

14 |       Q     Would you turn to your deposition please, page 109?

15 |       A     Yes.

16 |       Q     And I'm going to start at the bottom on line 24 and  
17 | read over. Let me back up and say that generally what's being  
18 | discussed here is your conversation with Mr. Schauble, and at  
19 | line 24 there is the following: "Question: And did you tell  
20 | him who the engineer was who had visited the antenna site?  
21 | Answer: I indicated that it was a contract engineer hired by  
22 | Trinity."

23 |       A     Yes.

24 |       Q     Now, was that answer truthful when you gave it?

25 |       A     Yes.

1 Q Does that now refresh your recollection as to  
2 whether you told Mr. Schauble that the engineer referred to in  
3 Exhibit 1 was not Raystay's engineer?

4 A Yes. I must have told John Schauble that it was  
5 Trinity's engineer.

6 Q Now, did you volunteer that information to Mr.  
7 Schauble?

8 A I don't recall if I volunteered it or not.

9 Q Well, why did you make a point of telling Mr.  
10 Schauble that the engineer was Trinity's engineer?

11 A I was trying to give him accurate answers to his  
12 questions.

13 Q You felt it would be misleading otherwise if you  
14 didn't make that distinction?

15 A I think I was trying to give him accurate answers to  
16 his questions.

17 Q Well, did Mr. Schauble ask you whether the engineer  
18 was Raystay's engineer?

19 A I don't recall whether he asked me or whether I  
20 volunteered the information.

21 Q Now, the engineer, Mr. Riley, he was not delegated  
22 by Raystay to make this visit, was he?

23 MR. SCHAUBLE: Objection. Was he --

24 MR. EMMONS: Authorized.

25 MR. SCHAUBLE: I don't understand what delegated

1 means.

2 BY MR. EMMONS:

3 Q Mr. Riley was not acting on authority or as an agent  
4 for Raystay in making his visit to the Lebanon and the  
5 Lancaster sites? Is that not correct?

6 A Mr. Riley was being paid by somebody other than  
7 Raystay.

8 Q And he was under no instructions from Raystay?

9 A I asked him to call me to discuss his findings when  
10 he had completed his visits.

11 Q But that was more as a courtesy than as a  
12 establishment of a business relationship with Mr. Riley?  
13 Correct?

14 A No. I was interested in his professional opinion as  
15 to what he would find.

16 Q Did he give you his work product after he -- did he  
17 turn over his work product to you after he visited those  
18 sites?

19 A No.

20 Q Do you know what determinations Mr. Riley made  
21 regarding "what site preparation work and modifications need  
22 to be done at the site?"

23 A I had telephone discussions with Tom Riley after he  
24 made his visits, yes.

25 Q And what did he tell you?

1           A     I remember the generalities of the conversations. He  
2 was favorably impressed with the Lebanon site. He seemed to  
3 see the same things there that I had seen as far as placement  
4 of towers and transmitters and access and electric. He made  
5 some comments about the suitability of the Lancaster site that  
6 I disagreed with, specifically the fact that there was dust  
7 and that he didn't feel that he was happy with the environment  
8 that the site owners had suggested where his transmitter could  
9 go with isolating it from dust. I disagreed with him on that  
10 point.

11          Q     Well, in fact, he told you, did he not, that he  
12 could not recommend that Lancaster site to his client by  
13 reason of the dust problem?

14          A     I, I believe he made some reference to wording like  
15 that, yes.

16          Q     Now, I come back to my question. Do you know what  
17 determinations Mr. Riley made concerning site preparation work  
18 or modifications of the sites?

19          A     I think I just discussed site preparation and  
20 modifications.

21          Q     Well, what preparations? What modifications?

22          A     Well, for Lancaster site he was having a problem  
23 with the dust, so I suggested that we could modify the site by  
24 creating a room or a cabinet with a dust-free environment or  
25 perhaps a, a filter system of some sort to keep the dust out

1 rather than to place the transmitter in an open space in the  
2 building that existed at the site.

3 Q Well, what -- I'm referring to what determinations  
4 Mr. Riley made about modifications of the sites.

5 A Yeah. That's -- his determination was that he  
6 didn't like the dust and the location of the Lancaster  
7 transmitter -- the specific site for the transmitter that was  
8 suggested by the representative he was with and I suggested  
9 that we might modify that by not placing the transmitter in an  
10 open area where they're crushing stone but put it in a  
11 separate building or a separate cabinet that would have  
12 filters on it to keep the dust out.

13 Q Well, that was not Mr. Riley's suggestion?

14 A No. That was mine.

15 Q All right. In fact, Mr. Riley told you that he  
16 wasn't going to recommend the Ready-Mix Concrete Company to  
17 his client at all as a site?

18 A I believe he made reference to something to that  
19 effect.

20 Q Now, what about -- what modifications of the Lebanon  
21 site did Mr. Riley make as far as you know, what  
22 determinations as to modifications?

23 A We both agreed that it seemed like a, a very  
24 suitable site. The only minor modifications might be to bring  
25 an adequate electric source to the transmitter if there wasn't



1 one there, and neither of us determined that there wasn't one  
2 there, as I recall.

3 Q In fact, Mr. Gardner, isn't it true that Trinity's  
4 engineer's findings were of no consequence to Raystay's plans  
5 anyway?

6 A I wouldn't say that.

7 Q Well, would you look at exhibit -- TBF Exhibit 246  
8 once again, your declaration?

9 A Yes.

10 Q Page 2.

11 A Yes.

12 Q In the carryover paragraph at the top of the page  
13 you are referring to Mr. -- to the question about the dust at  
14 the Lancaster site and you say, "If anybody told Mr. Rick that  
15 the site was unsuitable, it was the buyer's engineer, not me.  
16 I was not told anything which would lead me to conclude that  
17 the site was unsuitable for Raystay's purposes." Now, what  
18 were Raystay's purposes?

19 A Well, eventually I believe that Raystay would use  
20 them as LPTV transmitter sites.

21 Q And you did not regard Mr. Riley's observations  
22 about the dust problem at Lancaster as being a problem for  
23 Raystay? Correct?

24 A I was concerned with his evaluation to the point  
25 that I made the second visit to the Lancaster site to try to

1 determine what dust problem he was encountering, and on both  
2 my visits to the sites and subsequent drive-by visits I never  
3 saw a dust problem that would lead me to believe that they  
4 were unsuitable for LPTV transmitter sites.

5 Q Now, Trinity has its own in-house engineers?  
6 Correct? I think you testified to that the other day.

7 A Trinity does?

8 Q I'm sorry. I don't mean that. I mean Raystay.

9 A George Gardner is an engineer, yes.

10 Q And are there other engineers employed on Raystay's  
11 or Waymaker's staff?

12 A They are primarily cable television engineers, yes.

13 Q Raystay also retains outside consulting engineers  
14 from time to time? Correct?

15 A Yes.

16 Q Now, do you have the authority within the company on  
17 your own to hire a consulting engineer to inspect a  
18 transmitter site?

19 A I --

20 MR. SCHAUBLE: Objection. Relevance, Your Honor.

21 JUDGE CHACHKIN: Overruled.

22 MR. GARDNER: I don't believe so.

23 BY MR. EMMONS:

24 Q Do you have the authority within the company on your  
25 own to send an in-house engineer as opposed to an outside

1 consulting engineer to go inspection a transmitter site?

2 A No engineer reports to me primarily, so I would say  
3 I do not have the authority to send one.

4 Q Now, who would be needed -- who at the company --  
5 whose approval would be needed to send an engineer out to  
6 inspect a transmitter site?

7 A George Gardner could do that or -- you mean now or  
8 then?

9 Q Then.

10 A Then? Let's see. That was 1991. Well, certainly  
11 George Gardner could do it and he would probably -- the  
12 employment structure in 1991, I cannot say for certain whether  
13 we had a Director of Engineering or not, but if we had a  
14 Director of Engineering he could have also have sent an  
15 engineer out.

16 Q Now, did you ever ask George Gardner or anyone else  
17 at the company for approval to send an engineer out to inspect  
18 the Lebanon or Lancaster sites?

19 A I don't believe so, no.

20 Q To your knowledge did Raystay ever have it's own  
21 engineer, either in-house engineer or some consulting  
22 engineer, inspect either the Lebanon or the Lancaster site?

23 A Not to my knowledge, no.

24 Q Now, is it one of your job responsibilities to  
25 negotiate leases for transmitter site space? Is that correct?

1           A     Yes.

2           MR. SCHAUBLE: I'm sorry. Can I ask as to the time  
3 frame? Are we talking --

4           MR. EMMONS: I'm talking the time frame 1991.

5           MR. SCHAUBLE: Thank you.

6           MR. GARDNER: Yes.

7           BY MR. EMMONS:

8           Q     And from your knowledge of how the company works,  
9 the Raystay company works, would Raystay have signed any lease  
10 for a transmitter site without first having its own engineer  
11 inspect the site?

12          A     I would say probably not.

13          Q     Now, you said in your June 1993 declaration that --  
14 as we discussed a bit earlier, this was TBF Exhibit 246, that  
15 you were never told anything that would lead you to conclude  
16 that the Lancaster site was unsuitable for Raystay's purposes.  
17 And my question is, in light of the fact that you and the, and  
18 the Trinity engineer apparently disagreed about the  
19 suitability of that site, why did Exhibit 1 mention the  
20 findings of the engineer at all or purport to mention the  
21 findings of the engineer? If you want to see Exhibit 1 --

22          A     Yeah. That's the --

23          Q     That's TBF Exhibit 245, page 3, last sentence of the  
24 third paragraph.

25          A     Page 3, last sentence of the third paragraph. Okay.

1 And your -- could you repeat your question, please?

2 Q Yes. My question is why did -- in view of the  
3 apparent disagreement between you and Trinity's engineer about  
4 the suitability of the Lancaster site, why did Exhibit 1 even  
5 mention or purport to mention the findings of this engineer  
6 who was not Raystay's engineer?

7 A In the preparation of Exhibit 1 John Schauble asked  
8 me a series of questions and then he created Exhibit 1 for my  
9 review and in my review of Exhibit 1 I considered his  
10 statements -- his representations of my statements to be  
11 accurate.

12 Q Well, did you ask him why he was mentioning this  
13 engineer when it was not Raystay's engineer?

14 A I don't recall specifically questioning that.

15 Q But you knew it was not Raystay's engineer?

16 A Yes.

17 Q And you knew that Mr. Schauble knew it was not  
18 Raystay's engineer because you had told him that?

19 A Yes.

20 Q Did that not surprise you when this came back to you  
21 for your review that there is reference to this engineer but  
22 no reference to the fact that it was not Raystay's engineer?

23 A It did not surprise me.

24 Q And you raised no question about it?

25 A I don't recall raising a question about it.

1           Q     You wanted the FCC to think that it was Raystay's  
2 engineer, didn't you?

3           MR. SCHAUBLE:  Objection.  Argumentative.

4           JUDGE CHACHKIN:  Overruled.

5           MR. GARDNER:  I don't recall thinking that I was  
6 trying to tell the FCC that it was Raystay's engineer.

7           BY MR. EMMONS:

8           Q     You thought at the time, though, did you not, when  
9 you approved this exhibit that the impression given by that  
10 sentence is that that was Raystay's engineer?

11          A     I did not think at the time that the impression  
12 given by this exhibit would be that it was Raystay's engineer.

13          Q     Yet you had made a point of telling Mr. Schauble in  
14 your conversation with him that it was, in fact, Trinity's  
15 engineer?

16          A     I apparently did tell him that.

17          Q     Now, let me turn your attention again to TBF Exhibit  
18 246 which is your declaration of June 1993, page 2.  And,  
19 again, focus your attention on the -- at the bottom of page 2  
20 and carrying over to the top of page 3, the sentence we've  
21 already looked at, "With respect to the statement, a  
22 representative of Raystay and an engineer have visited the  
23 antenna site and ascertained what site preparation work and  
24 modifications need to be done at the site.  That statement  
25 refers to the engineer's visit to the sites."  I'm going to

1 show you a document --

2 MR. EMMONS: I will that it be marked for  
3 identification as TBF Exhibit 268, Your Honor. Your Honor,  
4 this is a document consisting of five pages, so numbered,  
5 consisting of the cover page and certain interior pages of a  
6 document filed in this proceeding on June 7, 1993 entitled  
7 Opposition to Contingent Motion to Enlarge Issues against  
8 Glendale Broadcasting Company. I would ask that that be  
9 marked for identification.

10 JUDGE CHACHKIN: The document described is marked  
11 for identification as TBF Exhibit 268.

12 (The document that was referred to as  
13 TBF Exhibit No. 268 was marked for  
14 identification.)

15 BY MR. EMMONS:

16 Q Now, Mr. Gardner, would you turn to page 4 of the  
17 exhibit which is the number at the lower right-hand part which  
18 is actually page 25 of the, of the original document?

19 A Yes. Just a minute. I've got something on my  
20 glasses. There we go. Okay.

21 Q Do you have that now?

22 A Yes, I do.

23 Q All right. About the middle of the page, just above  
24 the middle of the page, the -- there is a sentence that  
25 begins, "The reference to visitations?"

1 A The reference to visitations of the sites?

2 Q Right. You have that sentence?

3 A Yes, I do.

4 Q And it reads, "The reference to visitations of the  
5 sites refers to the engineer's visit to both the Lancaster and  
6 Lebanon sites, as well as David Gardner's viewing of the  
7 sites." Now, I want you to focus on that sentence and also at  
8 the same time focus on the statement in your declaration, at  
9 the bottom of page 2 and top of page 3 of your declaration,  
10 TBF Exhibit 246.

11 A Yes.

12 Q And ask you whether you agree with me --

13 A Is this 80036?

14 Q Correct.

15 A Yes.

16 Q Okay. My question is do you agree with me that the  
17 statement I quoted from the pleading, TBF Exhibit 268 for  
18 identification, is different from the statement you made in  
19 your declaration at the bottom of page 2 and top of page 3 of  
20 TBF Exhibit 246?

21 MR. SCHAUBLE: Objection, Your Honor. No foundation  
22 that the witness is a competent witness to, to testify about  
23 TBF Exhibit 268. Before the witness is, before the witness is  
24 asked any questions about the document it seems to me, Your  
25 Honor, the witness should be asked whether he has ever read or



1 | seen this document and when he did so, and I would respect-  
2 | fully suggest that if the witness -- that if it's not so, that  
3 | the, that the witness is not a competent witness to discuss --

4 |           MR. EMMONS: Well, Your Honor, the witness, the  
5 | witness made a statement in his own declaration which is TBF  
6 | Exhibit 246 and that statement has now been characterized in  
7 | the -- in Exhibit -- TBF Exhibit 268, and my question is going  
8 | to be whether the witness agrees with the characterization of  
9 | his own statement.

10 |           JUDGE CHACHKIN: Who -- I -- you're asking to, to  
11 | tell you whether he agrees with the characterization of his  
12 | statement made by somebody else?

13 |           MR. EMMONS: That's right.

14 |           JUDGE CHACHKIN: I'll overrule the objection.

15 |           MR. GARDNER: I should stop on page 3 at the word  
16 | "sites?"

17 |           MR. EMMONS: That's correct.

18 |           MR. SCHAUBLE: Is that on TBF Exhibit 246?

19 |           MR. EMMONS: That's correct.

20 |           MR. GARDNER: And then on page 4 I should read  
21 | starting with, "The reference to visitation?"

22 |           BY MR. EMMONS:

23 |           Q     That's right.

24 |           A     And going to the word "true?"

25 |           Q     No. Going to the word "sites." Just the one